IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

TEMPIE L. ADAMS,	)	Civil Action Number: 1:16-cv-03415-JMC
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
UNITED STATES DEPARTMENT OF LABOR,	)	
	)	
	)	
Defendant.	)	

DEFENDANT'S SUR-REPLY

Pursuant to the Court's Consent Amended Scheduling Order, ECF No. 24, Defendant United States Department of Labor (DOL), by and through the undersigned United States Attorney, hereby offers the following points in response to arguments made by Plaintiff Tempie L. Adams (Adams) in her reply brief (ECF No. 30), in this action in which she seeks review of a final decision of DOL denying her claim under Part E of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. §7384 *et seq*.

Adams' reliance, in her reply brief, on DOL's previous acceptance of her claim for impairment compensation due to her accepted condition of beryllium sensitivity, as evidence that her diagnosed condition of chronic obstructive pulmonary disease (COPD) is related to her exposure to beryllium, is misplaced. Any loss of lung function experienced by Adams on account of her accepted beryllium sensitivity would be, at most, evidence of the progression of that condition to chronic beryllium disease (CBD), not COPD. The potential for this progression is the reason Congress included medical monitoring in the benefits awarded to individuals with beryllium sensitivity. *See* 42 U.S.C. § 7384s(c)(2) (an individual with beryllium sensitivity shall receive "[r]egular medical examinations thereafter to determine whether that individual has developed established chronic beryllium disease."). Adams' treating physician, Dr. R. Hal Hughes, in fact speculated in his February 18, 2016 report that his findings, including declining spirometry and abnormal scarring on a CT scan, were "highly suggestive" of CBD. (AR 288-292).[1]

Adams' argument that DOL erred by discounting her exposure to beryllium in reliance on data in its Site Exposure Matrices (SEM) also misses the mark. ECF No. 30, p. 3. In support of her argument, Adams presents a hypothetical scenario wherein a mesothelioma claim is denied because SEM failed to show a potential for exposure to asbestos, despite a previous acceptance of pleural plaques from exposure to asbestos. This hypothetical scenario is not analogous to Adams' claim, however, as there is a known scientific link between asbestos exposure and mesothelioma, whereas there is presently no scientifically-established link between beryllium exposure and COPD. Consequently, the fact that DOL presumed Adams' exposure to beryllium at the SRS in accepting her claim for beryllium sensitivity has no bearing on her claim for COPD.

Finally, DOL has at no point suggested—as Adams contends on page five of her reply brief—that any exposure Adams had to beryllium occurred somewhere other than at the SRS. Because the potential for beryllium exposure existed at the SRS during the entire course of its

[1] As noted in DOL's responsive brief, in light of Dr. Hughes' statement in his February 18, 2016 report, the Final Adjudication Branch (FAB) informed Adams that she would need to submit a new claim form if she wished to seek compensation under Part B for CBD. (AR 246). DOL notes, additionally, that it appears from Dr. Hughes' report and other references in the AR that Adams may incorrectly believe that a lung biopsy or bronchoscopy is necessary to establish a claim for CBD under EEOICPA. (AR 288, 750, and 765). As Adams was advised in the cover letter to FAB's final decision (AR 246), however, a lung biopsy is only one way to prove lung pathology consistent with CBD. *See* Federal (EEOICPA) Procedure Manual, Chapter 2-1000.7 (Sept. 2015).

operations, DOL presumed Adams' exposure to beryllium during her work at the facility in accepting her claim for beryllium sensitivity based on an abnormal beryllium lymphocyte proliferation test. (AR 1171-1176). In its development of her claim for COPD, however, there was no reason for the district office to request an opinion from the industrial hygienist or the contract medical consultant with regard to Adams' beryllium exposure or whether that exposure was a significant factor in aggravating, contributing to, or causing Adam's COPD when it had no persuasive and probative evidence of a causal link between beryllium exposure and COPD, either based on data in the SEM or as supported by a well-rationalized medical opinion from Adams' treating physician. FAB's statements in its final decision regarding the amounts of beryllium to which Adams potentially may have been exposed during her work at the SRS were made in responding to Adams' objection that the district office failed to consider her beryllium exposure in its development of her COPD claim, and explaining why the studies submitted by her showing a higher incidence of COPD among workers at beryllium plants did not provide sufficient support to establish a *causal link* between her COPD and any potential beryllium exposure at the SRS.

CONCLUSION

For the above-stated reasons, and for those stated previously in its responsive brief (ECF 28), DOL respectfully requests that the Court grant judgment for it in this matter, and dismiss Adams' complaint seeking review of DOL's final decision on her claim for COPD under Part E of EEOICPA, with prejudice.

Respectfully Submitted,

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